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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK VICINAGE

MALIBU MEDIA LLC, *Plaintiff;* *vs.* **GILMAR DINAS,** *Defendant.*	CIVIL ACTION NO. 2:15-CV-03041 **ANSWER** with Affirmative Defenses

For his answer to the amended complaint (ECF 8) filed by the plaintiff copyright troll Malibu Media LLC, defendant Gilmar Dinas says that:

1. Defendant admits that Paragraph 1 of the complaint purports to set forth an action for copyright infringement under the United States Copyright Act and seeks related relief, but defendant specifically denies that plaintiff is entitled to such relief.

2. Defendant denies the allegations in Paragraph 2.

3. Defendant denies the allegations in Paragraph 3.

4. Defendant lacks sufficient information as to the truthfulness of the allegations in Paragraph 4, and therefore denies the same for want of knowledge, and leaves plaintiff to its proofs.

5. For his answer to Paragraph 5 of the complaint, defendant admits that this Court has jurisdiction over the subject matter of copyright infringement actions.

6. For his answer to Paragraph 6 of the complaint, defendant admits that his current residence is within the territorial jurisdiction of this Court, but denies the remaining allegations, and leaves plaintiff to its proofs.

7. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7, and therefore denies those allegations, and leaves the copyright troll to its proofs.

8. Defendant admits that its residential address is within the territorial jurisdiction of this Court, but denies the remaining allegations in Paragraph 8 for want of knowledge.

9. For his answer to the allegations in Paragraph 9, defendant states upon information and belief that plaintiff is a "copyright troll," having outmaneuvered the legal system after discovering the nexus of antiquated copyright laws, paralyzing social stigma, and unaffordable costs of legal defense, their business model is built upon exploiting that anomaly by accusing individuals of illegally downloading pornographic videos. Defendant denies the remaining allegations in Paragraph 9, and leaves plaintiff to its proofs.

10. Defendant admits the allegations in Paragraph 10.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and therefore denies those allegations.

12. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12, and therefore denies those allegations.

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13, and therefore denies those allegations.

14. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14, and therefore denies those allegations.

15. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and therefore denies those allegations.

16. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16, and therefore denies those allegations.

17. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17, and therefore denies those allegations.

18. Defendant denies the allegations in Paragraph 18, and leaves plaintiff to its proofs.

19. Defendant denies the allegations in Paragraph 19, and leaves plaintiff to its proofs.

20. Defendant denies the allegations in Paragraph 20, and leaves plaintiff to its proofs.

21. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21, and therefore denies those allegations.

22. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22, and therefore denies those allegations.

23. Defendant denies the allegations in Paragraph 23, and leaves plaintiff to its proofs.

24. Defendant denies the allegations in Paragraph 24, and leaves the copyright troll to its proofs.

25. For his answer to Paragraph 25 defendant admits that UTC is a commonly known acronym for Universal Time, but denies the remaining allegations therein.

26. Defendant denies the allegations in Paragraph 26, and leaves the copyright troll to its proofs.

27. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27, and therefore denies those allegations.

28. Defendant denies the allegations in Paragraph 28, and leaves the copyright troll to its proofs.

29. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29, and therefore denies those allegations.

30. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30, and therefore denies those allegations.

31. For his answer to the allegation(s) in Paragraph 31 of the copyright troll's complaint, defendant admits that he called the office of plaintiff's counsel, but denies the remaining allegations.

32. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32, and therefore denies those allegations.

33. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33, and therefore denies those allegations.

34. Defendant denies the allegation(s) in Paragraph 34 for want of knowledge.

35. Defendant denies the allegations in Paragraph 35, and leaves plaintiff to its proofs.

36. Defendant denies the allegations in Paragraph 36, and leaves plaintiff to its proofs.

37. Defendant denies the allegation(s) in Paragraph 37 for want of knowledge.

38. For his answer to the allegations in Paragraph 38 of he copyright troll's complaint, defendant repeats the above answers as if fully rewritten herein.

39. Defendant admits that Exhibit B to the complaint purports to be a record of copyright registrations, but lacks sufficient information as to the truth or falsity of whether plaintiff is the owner of said copyrights, and denies that the cited "works" are original and/or copyrightable materials.

40. Defendant denies the allegations in Paragraph 40, and leaves plaintiff to its proofs.

41. Defendant denies the allegations in Paragraph 41, and leaves plaintiff to its proofs.

42. Defendant denies the allegations in Paragraph 42, and leaves plaintiff to its proofs.

43. Defendant denies the allegations in Paragraph 43, and leaves plaintiff to its proofs.

44. Defendant denies that the copyright troll is entitled to any relief whatsoever, and requests a jury trial on all issues.

45. Defendant further denies any and all allegations, or parts thereof, unless the same was specifically admitted in this answer.

46. Defendant reserves the right to supplement or amend this answer, including by asserting additional defenses, as warranted by facts revealed through investigation and discovery.

Respectfully submitted,

BAHGAT & BAHGAT LLC
Counsel for Defendant

By: _______________________

Dated: 3-Mar-2016 Joseph A. Bahgat

AFFIRMATIVE DEFENSES

Without undertaking or otherwise shifting any applicable burden of proof, defendant asserts the following defenses.

FIRST AFFIRMATIVE DEFENSE
FAILURE TO STATE A CLAIM

The complaint fails to state a claim upon which relief can be granted. Plaintiff is unable to demonstrate the defendant committed a volitional act of infringement, and is wrongfully suing this defendant.

SECOND AFFIRMATIVE DEFENSE
NO INFRINGEMENT

Defendant has not engaged in or contributed to any infringement of the copyrights alleged; furthermore, plaintiff is unable to prove that defendant's alleged activities even constituted an act of infringement because it cannot be demonstrated based on the evidence provided that he made a complete copy of the work alleged by plaintiff.

THIRD AFFIRMATIVE DEFENSE
MISUSE OF COPYRIGHT

Any entitlement to relief is barred by the doctrine of misuse of copyright.

FOURTH AFFIRMATIVE DEFENSE
FAILURE TO JOIN INDISPENSABLE PARTIES

Defendant asserts the affirmative defense of failure to join an indispensable party, insofar as plaintiff failed to conduct any significant investigation to truly identify the individual(s) who allegedly engaged in the downloading/sharing in question, and who is/are indispensable parties pursuant to Rule 12(b)(7) and 19 of the Federal Rules of Civil Procedure. For failing to join the indispensable party, plaintiff's complaint should be dismissed with prejudice as to this defendant.

FIFTH AFFIRMATIVE DEFENSE
DE MINIMIS NON CURAT LEX

Plaintiff's claim for copyright infringement is barred by the doctrine of *de minimis non curat lex* (the law cares not for trifle) aka *de minimis* use. Any infringing activity using defendant's father's Internet connection was momentary at best, and plaintiff lacks evidence as to the extent and duration of the alleged infringing activity and whether it was proximately or indirectly caused by this defendant.

SIXTH AFFIRMATIVE DEFENSE
FAILURE TO MITIGATE DAMAGES

Plaintiff has made no attempt to mitigate any actual or perceived damages, which defendant expressly denies; therefore, defendant requests dismissal of the complaint based on plaintiff's failure to mitigate.

SEVENTH AFFIRMATIVE DEFENSE
STATUTORY DAMAGES & ATTORNEY'S FEES BARRED

Plaintiff's claim for statutory damages is barred by the U.S. Constitution. Amongst other rights, the Fifth Amendment right to due process bars plaintiff's claim. As the Supreme Court has held, due process will prohibit an award of statutory damages meeting or exceeding a proportion of ten times or more actual damages. In fact, an award of statutory damages at four times actual damages "might be close to the line of constitutional impropriety." If all of plaintiff's settlements for infringement of the works in question are added together, the damages are likely to far exceed the statutory maximum allowed by the copyright statute.

EIGHTH AFFIRMATIVE DEFENSE
LICENSE, CONSENT & ACQUIESCENCE

Plaintiff's claims are barred by plaintiff's implied license, consent, and acquiescence to defendant because plaintiff authorized use via BitTorrent.

NINTH DEFENSE
UNCLEAN HANDS

Plaintiff's claims for equitable relief are barred by the doctrine of unclean hands.

TENTH AFFIRMATIVE DEFENSE
LACK OF VOLITIONAL ACT

Plaintiff's claims are barred because the alleged infringement was not caused by a volitional act attributable to this defendant.

ELEVENTH AFFIRMATIVE DEFENSE
ESTOPPEL

Plaintiff's claims are barred by the doctrine of estoppel. Without admitting any infringement, defendant alleges that although plaintiff knew the facts of any alleged file sharing by defendant and/or others within proximity connection, plaintiff acted in such manner that defendant and/or third parties were entitled to, and did, believe that the continued availability of the copyrighted work on BitTorrent was intended by plaintiff, and any actions to download were induced by, and done in reliance on, plaintiff's conduct.

TWELFTH AFFIRMATIVE DEFENSE
INTERVENING CAUSES

Without admitting that plaintiff has sustained any injury or damages, and without admitting any liability whatsoever, defendant alleges that the injuries complained of and the damages sought by plaintiff was the direct and proximate result of certain independent actions of third plaintiff over whom this defendant has no control. This defendant, therefore, is not liable for any of the damage that may have resulted therefrom.

PRAYER FOR RELIEF

WHEREFORE the Doe Defendant respectfully demands judgment against plaintiff copyright troll Malibu Media, LLC as follows:

(1) that plaintiff take nothing by the complaint, and that the same be dismissed with prejudice;

(2) awarding defendant his costs and reasonable attorneys' fees incurred in defending this action;

(3) awarding defendant all damages sustained as a consequence of plaintiff's acts complained of herein; and

(4) granting such other and further relief as the Court deems appropriate.

Respectfully submitted,

By: ______________________________

Dated: 3-Mar-2016

Joseph A. Bahgat

DEMAND FOR JURY TRIAL

Defendant demands a trial by jury as to all issues so triable.

By: ______________________________

Dated: 3-Mar-2016

Joseph A. Bahgat

CERTIFICATE OF SERVICE

I certify in accordance with Fed. R. Civ. P. 5(b)(2)(E) that on the date stamped above, a true and correct copy of the foregoing document was filed with the court electronically, and that all attorneys having appeared in this matter have been or will be served with notice of this filing at the email address they have registered with the court's CM/ECF system.

JOSEPH A. BAHGAT (0082116)